IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2568 OF 2004

IN

SUIT NO.1070 OF 1991

...

Deepak Mahendralal Shah ...Plaintiff

v/s.

Mahendralal Mansukhlal Shah

and ors. ...Defendants

...

Mr.Kukreja i/b Kukreja & Co. for the Plaintiff.

Mr.S.S.Purohit for the Defendant No.2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 14TH JULY,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. Following are the admitted facts:

(i) The flat to which the prayer clause (a) of this Notice of Motion relates admittedly was owned by the deceased mother of the Plaintiff and the Defendants Nos. 2 to 6. She was holding the property as tenant thereof.

(ii) The flat was occupied by Defendant No.2 for the last four years, but now he is residing in the United States of America and he is not occupying the flat.

2. In this situation, the Plaintiff has applied for appointment of the Receiver on the flat, because Defendant No.2 is not occupying the flat, he is not residing in the Country and the flat is lying vacant. According to the Plaintiff, if the Receiver is appointed, the estate of the deceased mother can earn income on the flat.

3. The defence of the Defendant No.2 is that the flat was not owned by the mother, but she was merely the tenant of the flat and that the Defendant No.2 has temporarily gone to the United States of America and has not permanently settled there.

4. Now, so far as the defence that the mother was merely the tenant of the flat is concerned, whether the tenancy would be inherited by all the heirs or not has to be decided at the final hearing of the suit. There is no dispute that the mother was the tenant of the flat. There is also no dispute that the flat is lying vacant.

5. In this view of the matter, therefore, in my opinion, the Plaintiff is justified in claiming that the Receiver should be appointed on the flat so that income can be earned from the flat in stead of flat keeping merely vacant. In my opinion, following order would meet the ends of justice.

O R D E R

(a) Notice of Motion is granted in terms of prayer clause (a).

(b) It is directed that the Receiver shall initially take only symbolic possession of the flat, and then take steps to appoint agent of the Receiver to be in possession of the flat. The Receiver shall call bids and appoint highest bidder as the agent.

(c) The parties to the suit including the Defendant No.2 shall be entitled to bid when the Receiver calls bid for appointment of agent to be in possession of the flat.

(d) In case the Defendant No.2 turns to be the highest bidder, it is not necessary for the Receiver to disturb his physical possession. But in case the Defendant No.2 does not turn out to be the highest bidder, the Receiver shall take steps to take physical possession of the flat and put his agent in possession of the flat.

(e) In case the Defendant No.2 permanently shifts to India, the Defendant No.2 shall be at liberty to apply to the Court for modification or cancellation of this order.

(f) Notice of Motion disposed of.

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